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But What Laws Were Broken?

In the face of damaging Iran-contra testimony, the White House shifts its strategy



When Ronald Reagan admitted two weeks ago that he had discussed contributions to the Nicaraguan *contras* with King Fahd of Saudi Arabia in 1985, news reports suggested that the President had knowingly contravened the Boland amendment. Or so it seemed to White House Aide Thomas Griscom, who marched into the office of Chief of Staff Howard Baker. Said Griscom: "At some point you've gotta say whoa!"

At the start of last week Baker did. Though Reagan claims that Fahd offered his *contra* contribution voluntarily, Baker asserted that the President would have been within his rights to ask for the money outright. "I've been absolutely astonished to hear people say that it was illegal for . . . the President to solicit funds for the *contras*," the chief of staff declared on NBC's *Meet the Press*. The Boland amendment, he said, "never mentioned the President."

Baker's remarks signaled a surprising new White House strategy in coping with what has emerged as a central question posed by Congress's hearings about the Iran-*contra* affair: Did Ronald Reagan violate U.S. law? Reagan and his aides have begun freely admitting that he was deeply involved in encouraging private support for the *contras* during the period when the Boland amendment barred "direct or indirect" U.S. aid. But they argued that the amendment simply did not apply to the President—and if it had, it would have been unconstitutional.

Hints of such a defense had surfaced briefly in the past but were quickly submerged by the President's insistence that he had been only dimly aware of what his lieutenants had been doing to aid the *contras*. Once the congressional hearings started, however, that pretense could not be maintained. Witness after witness described what appeared to be clear violations of the Boland amendment and indicated that Reagan had been deeply involved in the efforts to help the *contras*.

This new "Yes, but it wasn't illegal" tack is part of a broader White House attempt to shift the focus of the Iran-*contra* drama. As long as Reagan and other top officials were pleading ignorance, each new disclosure about their ties to Oliver North's secret *contra*-supply network qualified as a front-page headline. Now the Administration is stipulating that it did indeed support the *contra* cause but that this was well within

the bounds of the shifting congressional restrictions that existed between 1983 and 1986. Thus the very real moral and political questions about a secret policy that was clearly designed to thwart the Boland amendment has temporarily given way to a trickier legal dispute: Exactly what did that amendment and other laws forbid, and to whom did they apply?

The Boland amendment went through several congressional rewrites (see chart). Originally it forbade any expenditures "for the purpose of overthrowing the government of Nicaragua." Then it placed a \$24 million limit on aid to "military or paramilitary operations in Nicaragua." The most restrictive version, in effect from October 1984 to December 1985, stated that "no funds available" to the CIA, the Defense Department or any "entity of the U.S. involved in intelligence activities" could be used "directly or indirectly" to support the *contras*.

The White House claims the amendment placed only one restriction on the President: he could not use money available to those agencies to help the *contras*. Otherwise he was free to do pretty much anything he pleased—encourage private donations or contributions from other countries, for example. Any other reading of the amendment, Reagan supporters asserted, would unconstitutionally restrict the President's power to conduct foreign policy.

Lloyd Cutler, who was counsel to President Carter, argues that "normally a statute that mentions other executive agencies but not the President explicitly is interpreted as not applying to him." But critics protest that this would put the President above the law. Says Harvard Law Professor Laurence Tribe: "Congress's control over the purse would be rendered a nullity if the President's pocket could conceal a slush fund dedicated to purposes and projects prohibited by the laws of the U.S." Democratic Congressman Edward Boland observed that if Reagan wanted to claim exemption from the amendment, he should have done so when it was enacted. Instead, Boland noted, Reagan signed the bill without any public comment.

Did the Boland amendment apply to the National Security Council? The White House contends that the NSC does not fit the definition of

an "entity engaged in intelligence activities." A secret opinion by the President's Intelligence Oversight Board took this approach in 1985. Former Watergate Prosecutor Philip Lacovara agrees that if Congress intended the amendment to apply to "other than those persons connected with official intelligence agencies, it could and should have said so." But many experts agree with Tribe that NSC officials were clearly "acting as intelligence agents." Even Robert McFarlane testified that it was his "common-sense judgment" that the law applied to the NSC, which he headed.

Did the law forbid Administration solicitation from other countries or private individuals of funds to buy arms for the *contras*? By specifying that "no funds available" could be used, the Boland amendment seemed to prohibit such a ruse. Assistant Secretary of State Langhorne Motley told Congress in 1985 that the Administration interpreted the law to prohibit "soliciting and/or encouraging other countries to contribute funds." He said, "We have refrained from doing that." In fact it was being done—without his knowledge, says Motley.

Private U.S. citizens who donated to the cause described how North and others would give a strong pep talk about the needs of the *contras* and then leave it to private fund raisers like Carl Channell to ask directly for donations. Republican Senator Warren Rudman described it as a "one-two punch." According to William O'Boyle, a New York City oil investor who testified last week, he was told by North that as a Government employee he could not directly ask for donations. But Joseph Coors, a Colorado brewing-company executive, testified that in January 1986 North did personally ask him for \$65,000 to buy a plane for the *contras*.

Did the ban on "indirect" expenditures apply to funds used to pay the salaries of Government officials who helped the *contras*? During the debate over his amendment in 1984, Boland emphasized the point: "It clearly prohibits any expenditure, including those from accounts for salaries." If he is right, the disclosures that various Government employees—most notably North and Assistant Secretary of State Elliott Abrams—spent time coordinating support for the *contras* would pretty clearly point to a violation of the law.

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Independent Counsel Lawrence Walsh seems to be pursuing a strategy designed to get around the murkiness of the Boland amendment and the fact that it carries no criminal penalties. Besides seeking indictments charging such specific crimes as obstruction of justice, perjury and misuse of Government funds, Walsh may tie many defendants together in a broader conspiracy case, arguing that the individual overt acts were committed in pursuit of a larger scheme to evade the will of Congress. Engaging in such a conspiracy would be a felony punishable by five years in prison.

Despite disagreements over the Boland amendment's provisions, it seems clear enough that Congress intended to shut off for a period any kind of U.S. Government aid to the *contras*. Last week's testimony turned up new specific acts that show how the law was intentionally circumvented and probably violated outright by Government officials. Among the acts:

► Robert Owen, at the time a private citizen volunteering his services to North, made a trip to Costa Rica in 1985 to select a site for an airfield from which arms could be flown to the *contras*. He testified that he was met and shown around by a CIA agent who helped him choose the location. The CIA was barred at the time from such activities.

► In February 1986 Owen made two more trips to Costa Rica. Owen by then had a \$50,000 contract from the State Department to help in the delivery of "humanitarian" aid to the *contras*, which was permitted at the time. But he testified that on one trip he also helped deliver "lethal equipment" to the rebels, which was still banned.

Assistant Secretary of State Abrams is scheduled to testify June 2 and can expect tough grilling. Retired Army Major General John Singlaub testified that Abrams last March had "concurred in" his soliciting of *contra* contributions from two countries (Taiwan and South Korea) and had promised to send a "signal" that Singlaub had the Government's blessing. Later, said Singlaub, Abrams told him that solicitation of one country, apparently Taiwan, would be handled at the "highest level." Singlaub took that to mean "someone in the White House." Abrams disputes parts of this account.

The Boland amendment is far from the only statute that may have been violated by Government officials involved in the Iran-*contra* affair. Indeed, almost every day of the congressional hearings brings to light at least a hint of illegalities

going beyond Boland. Some examples:

► In a March 1985 memo to Robert McFarlane, then National Security Adviser, North described proposed deliveries of \$8 million worth of weapons and ammunition to a Central American country, known to be Guatemala. He enclosed "end-user certificates" attesting that the weapons would be used in that country. Actually, the memo made clear, "all shipments will be ... turned over to" the *contras*. This plan seems to violate the Arms Export Control Act.

► North told Congress last June, under oath, that he barely knew Owen. In fact, as Owen's testimony to the congressional Iran-*contra* investigators establishes, the two had been working together closely for two years. At the end of his testimony, Owen read a paean canonizing his mentor. Sample line: "... at crude altars in the jungle, candles burn for you."

► *Contra* Leader Adolfo Calero testified that he gave North \$90,000 in traveler's checks in 1985, supposedly to assist in the rescue of U.S. hostages held in Lebanon. Investigators, however, disclosed last week that North had cashed \$2,000 worth

and spent some in stores near his home. He bought, among other things, two snow tires for \$100. Senator Rudman, using sarcasm to make the point that the money was not spent for any public purpose, asked Calero "when was the last time it snowed in Nicaragua." The *contra* leader allowed that it does not snow in Nicaragua. It would be a crime for North to accept compensation from a non-Government source.

This week the congressional committee will hear from Albert Hakim, an Iranian-born businessman who worked on both the Iran arms deal and the *contra*-arms network. Meanwhile, David Kimche, a former official of the Israeli Foreign Ministry who has been identified as the originator of a plan to sell U.S.-made weapons to Iran, successfully resisted an attempt by Walsh to compel him to testify before a grand jury.

But the question regarding the President's duties under the law is sure to remain the major focus. Underlying the dispute over Boland's technicalities is a far more sweeping provision. Article I of the Constitution obliges the President to "take care that the laws be faithfully executed." At the very least, that would seem to have required Reagan to launch a careful study of what was forbidden by Congress under the Boland amendment and to insist that his aides abide by the results. So far there is no evidence that any such review was ever undertaken.

Legally, that failure is probably not punishable. But the moral point re-

mains. The Boland amendment may be foolish or even disastrous policy. Nonetheless, for all the ambiguities of its changing versions, it is the law, and the Constitution gives the President no latitude to choose which laws he will honor. —By George J. Church. Reported by Mays Gorey and Barrett Seaman/Washington

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1 June 1987**Nation****Boland:
Honored in
The Breach****DEC. 1982 to DEC. 1983**

The law: no funds may be used by the "CIA or the Department of Defense" to support military activities for "overthrowing the Government of Nicaragua."

Activities: CIA and Pentagon initiate plan, "Operation Elephant Herd," to transfer equipment to *contras*. > CIA steps up covert activity in Nicaragua, mounting a series of bombing attacks. > CIA writes and distributes a "psychological operations" manual telling how to assassinate local Sandinista officials. > Network of former U.S. military personnel, coordinated by CIA, begins supplying *contras* with weapons from air base in El Salvador.

DEC. 1983 to OCT. 1984

The law: not more than \$24 million of the "funds available to the Central Intelligence Agency, the Department of Defense, and any other agency or entity of the United States involved in intelligence activities" may be spent to support military operations in Nicaragua.

Activities: Pentagon exempts \$12 million of "surplus" military equipment from the \$24 million cap. > Saudis begin sending *contras* \$1 million a month. > McFarlane authorizes North to plan private funding for the *contras*. > CIA mines Nicaragua's harbors. > CIA borrows planes from Pentagon and then loans them to *contras* at no cost. > After setbacks in Congress, Reagan instructs McFarlane to fund the *contras* "any way you can."

OCT. 1984 to DEC. 1985

The law: "no funds available" to the CIA, Defense Department or "any other agency or entity of the United States involved in intelligence activities" can be spent to support, "directly or indirectly, military or paramilitary operations in Nicaragua."

Activities: Reagan instructs aides to help *contras* "hold body and soul together." > North and Secord begin full-scale "private" *contra* fund-raising and military-supply operation. > Bush and his adviser Donald Gregg meet with Felix Rodriguez (alias Max Gomez), a former CIA agent, who later takes job as liaison to Secord's *contra*-supply operation at air base in El Salvador. > Gregg and Rodriguez discuss problems of *contra*-supply operation. > Reagan meets with King Fahd, and Saudi Arabia increases *contra* subsidy to \$2 million a month. > Carl Channell, working in tandem with North, solicits private donations that are spent on *contra* arms. > North, Reagan, Elliott Abrams and William Casey discuss *contra* contributions with private donors. > North funnels private donations into Swiss bank accounts controlled by Secord and *contra* leaders. > Interagency group including Abrams, North and a CIA official instructs Ambassador to Costa Rica Lewis Tambs to help *contras* open a southern front. > Reagan calls Honduran President, persuading him to release blocked weapons shipment bound for *contras*.

DEC. 1985 to OCT. 1986

The law: same ban on military assistance, but "humanitarian aid, communications support, intelligence sharing" permitted.

Activities: Robert Owen assists in delivery of "lethal aid" to *contras*. > Abrams agrees to assist Singlaub solicit funds from Taiwan and South Korea (later, Abrams tells him they would instead be solicited "at the highest level"). > Sultan of Brunei deposits \$10 million to Swiss bank after account number is supplied by Abrams from North (number confused, and money goes to Swiss shipowner). > North threatens cutoff of U.S. aid to Costa Rica when its President protests secret airstrip. > CIA Deputy Director Robert Gates is told that profits from Iran arms sales diverted to the *contras*. > North-Secord supply network ends with downing of Eugene Hasenfus' plane.